

### REMARKS

Claim 75 has been amended to incorporate the language of claim 78, which has been canceled.

Claim 79 has been amended to correct its dependency.

Claim 88 has been amended to incorporate the language of claim 91, which has been canceled.

Claim 92 has been amended to correct its dependency.

Claims 99 and 100 have been amended to incorporate language relating to a fusion protein. Claim 99 has also been amended to correct a clerical error.

Claim 101 has been amended to incorporate the language of claim 105, which has been canceled. Claim 104 has been amended to conform it with amended claim 101, from which claim 104 depends.

Claim 106 has been amended to correct its dependency.

Claims 101-111 have been canceled without prejudice for presentation in a divisional or other continuing application.

Claim 116 has been amended to incorporate the language of claim 117, which has been canceled.

The amendments to the claims have been made without altering the intended claim scope and to better tailor the claims to encompass commercially contemplated embodiments of the invention. No acquiescence to any rejection of record is made. To the contrary, the amendments are made for business considerations. Applicants reserve the right to re-present in a continuing application, the difference, if any, in scope of a claim resulting from an amendment provided above.

Support for the language introduced into claims 75, 88, 99, 100, and 116 is found at least in claims 78, 91, 112, 114, and 117 as originally presented and on page 43, lines 10-23, pages 49-50, Example 5, and pages 53-55, Examples 10 and 11 as well as original claim 36 of the instant application. No new matter has been introduced, and entry of the amendments is respectfully requested.

Applicants wish to express their thanks for the courtesy of a telephonic interview on October 8, 2003 between Applicants' representatives, Jill Martin and Kawai Lau, and Examiners Jon Angell and Dave Nguyen.

The interview included a discussion of the references cited under 35 U.S.C. § 103(a) and the pending claims. In particular, a discussion of the teachings of the Anderson et al. published PCT application reference and claims 75 and 78 resulted in the focus on whether any reference of record disclosed the use of a fusion protein between a tumor interacting or targeting protein, such as an antibody which binds 5T4 antigen, and an anti-tumor protein as provided by claim 78. Applicants' representatives pointed out that Anderson et al. was the only document to include a reference to a fusion protein, but only one where a tumor targeting protein was fused to a viral envelope protein.

The Examiners agreed to review the references for such disclosure and Applicants' representative agreed to provide information regarding support in the application as filed for the language of claim 78.

On October 9, 2003, Applicants' representative Kawai Lau called Examiner Angell and left a message regarding support for the language of claim 78. Specifically, Kawai Lau directed the Examiner's attention to support found at least on page 43, lines 10-23, pages 49-50, Example 5, and pages 53-55, Examples 10 and 11 as well as original claim 36 of the instant application.

On October 15, 2003, Examiner Angell telephoned Kawai Lau and left a message indicating that the Examiner would be discussing the application with Examiner Dave Nguyen on the following day.

On October 21, 2003, Kawai Lau telephoned Examiner Angell and left a message inquiring as to developments in the application following the Examiners' discussion.

On October 23, 2003, Examiner Angell telephonically described, followed by sending a courtesy copy of, an Interview Summary (Paper No. 27) to Kawai Lau, indicating that the rejections of record would be withdrawn with respect to claims relating to a fusion protein.

Restriction Requirement

Claims 107-111 were withdrawn from consideration as being directed to an invention distinct from that elected by original prosecution on the merits. Without acquiescence to the propriety of the restriction, Applicants have canceled claims 107-111 without prejudice for presentation in a divisional application.

Rejection under 35 U.S.C. § 112, second paragraph

Claim 99 was rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite for recitation of "the tumor cells" without adequate antecedent basis for the term.

Applicants have corrected a clerical error in the omission of a comma in claim 99. With the correction, the relevant language in the claim now recites

"A method for inhibiting the growth of a tumor in a mammal comprising delivering directly to the tumor, cells transduced *ex vivo* with a vector comprising...."

Applicants thus respectfully submit that antecedent support for "the tumor" is found in the first recitation of "a tumor in a mammal" and that the first recitation of "cells" is definite and clear. Withdrawal of this rejection is respectfully requested.

Rejection under 35 U.S.C. § 103(a)

Claims 75-83, 85-96, 98-100, and 112-118 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Anderson et al. (WO 96/30504) in view of Myers et al.

Applicants note their understanding based on the Interview Summary (Paper No. 27) that this rejection would be withdrawn with respect to claims relating to "a fusion protein". Such claims include claims 78, 91, 112, 114, and 117 as originally presented.

As discussed above, independent claims 75, 88, 99, 100, and 116 have been amended to relate to "a fusion protein" as found in claims 78, 91, 112, 114, and 117 as originally presented. In light of these amendments, Applicants are of the belief that this rejection will be withdrawn and urge early indication to that effect.

Claims 75, 83, 84, 88, 96, 97, and 101-106 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Anderson et al. (WO 96/30504) in view of Myers et al. and Barber et al.


With respect to the inclusion of claims 75, 83, 84, 88, 96, and 97 in this rejection, Applicants refer to the above discussion and again are of the belief that this rejection will be withdrawn. Claims 101-106 have been canceled without acquiescence to the propriety of the instant rejection and without prejudice for presentation in a divisional or other continuing application.

#### Conclusion

In light of the above discussion, Applicants are of the understanding and belief that the rejections of record have been obviated and that the amended claims may be allowed to permit the instant application to pass to issuance. Early indication to that effect is urged.

If the Examiner believes a telephonic discussion would expedite prosecution of this application, he is encouraged to telephone the undersigned at the number provided below.

Respectfully submitted,

  
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